

After reviewing the record compiled to date, the Board finds:

1. Claimant injured his low back on August 16, 2001, while working for respondent. Claimant described the accident as follows:

I was working on a machine, taking out dog bones, and I had to step off and on a pallet about four inches high, and I went to get the dog bones from the chute, I had to bend over to pick them up, when I stood back up and turned around to go to the table, I come down wrong off that pallet and fell and injured my back.¹

And on cross-examination, claimant stated that he felt back pain before he fell and that he believed he injured his back when he twisted.

2. When claimant testified at the May 29, 2003 preliminary hearing, Dr. Tamara McCue remained his authorized treating physician. While treating claimant, Dr. McCue referred claimant to Dr. Douglas C. Burton, an orthopedic specialist at the K. U. Medical Center in Kansas City, who in November 2002 recommended a CT myelogram.
3. Respondent and its insurance carrier have either neglected or refused to authorize the recommended myelogram and they have also either neglected or refused to authorize a pain program that was recommended by Dr. McCue.
4. Following August 2001, claimant's back pain has not resolved and his back pain and symptoms have waxed and waned. On several occasions, he has experienced back spasms and intense pain. Claimant has experienced back spasms and increased pain while shoveling snow, mowing his lawn, sawing a piece of plastic pipe, sitting on the floor leaning into a cabinet looking for a can of yams, changing a car tire and bending down to wash his feet while showering.
5. The August 2001 accident was not the first back injury that claimant has sustained. In 1997, claimant experienced back pain when a machine exploded and broke three ribs. But claimant testified the pain from that accidental injury was located in a different area than the pain that he now experiences as a result of the August 2001 accident.
6. The parties introduced various medical records at the preliminary hearing, one of which was a February 24, 2003 letter from Dr. Burton, which stated, in part:

I am in receipt of your letter dated January 13, 2003. In this letter you chronicle Mr. Young's course of treatment since his work related

¹ P.H. Trans. at 8-9.

injury on August 16, 2001. The first question that is asked of me is whether or not the shower incident, shoveling incident, mowing incident, and or plumbing incident should be considered intervening accidents that permanently aggravated the patient's low back condition. It is my opinion that the patient has chronic low back pain, based on the fact that he has had pain in his back in varying degrees for the last 18 months. Any, and all, of these incidents could certainly be considered as significant as his initiating incident, which occurred at work in August 2001.

And other medical records that were introduced at the preliminary hearing indicate that claimant is nearing the end of his treatment barring any surprises from the recommended myelogram.

CONCLUSIONS OF LAW

The July 25, 2003 Order should be affirmed.

The Board concludes that claimant has established by the barest of margins that his present need for medical treatment is related to the August 16, 2001 accident. The Board finds that claimant has experienced back pain following the August 16, 2001 work-related accident that waxes and wanes depending upon his activities. The evidence does not establish that claimant sustained new and independent accidents following August 2001. Instead, based upon this record, the Board concludes that the occasional flare-ups of back pain that claimant experienced following August 2001 were merely temporary in nature and the natural consequence of the August 2001 back injury.

As provided by the Workers Compensation Act, preliminary hearing findings are not final but subject to modification upon a full hearing of the claim.²

WHEREFORE, the Board affirms the July 25, 2003 Order.

IT IS SO ORDERED.

² K.S.A. 44-534a.

Dated this ____ day of September 2003.

BOARD MEMBER

c: Joseph Seiwert, Attorney for Claimant
David F. Menghini, Attorney for Respondent and its Insurance Carrier
Nelsonna Potts Barnes, Administrative Law Judge
Paula S. Greathouse, Workers Compensation Director